

805 KAR 9:080. Content of the operations and reclamation proposal; form on which the proposal is filed.

RELATES TO: KRS 349.015, 349.105, 349.120, 349.130, 349.155, 353.5901

STATUTORY AUTHORITY: KRS 349.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 authorizes the Department for Natural Resources to promulgate all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349, governing coal bed methane wells. KRS 349.130 requires an applicant for a coal bed methane well permit to submit to the Department for Natural Resources an operations and reclamation proposal when applying for a permit. This administrative regulation specifies the content of the operations and reclamation proposal, creates the form on which that proposal is to be filed, and provides for the form on which well transfers are indicated.

Section 1. Definitions. In addition to those set out in KRS 349.010, the following definitions shall apply to this administrative regulation:

(1) "Cross drain" means an open ditch, constructed across the roadway, to carry off-road surface water and which is not intended to replace culverts or prohibit vehicular traffic.

(2) "Diversion ditch" means a channel or ridge constructed across a slope for diverting surface runoff.

(3) "Filter strip" means a natural vegetative strip, left undisturbed, between the disturbed construction area and a watercourse, and which acts as a buffer area to catch sediment before it enters the watercourse.

(4) "Final reclamation" means the date on which the operator has completed its drilling operations at the well site, has plugged the well and has performed all obligations described in the operations and reclamation proposal.

Section 2. Erosion and Sedimentation Plan. (1) The operations and reclamation proposal for a coal bed methane well shall be filed on Form CBM-11, entitled "Plan to Prevent Erosion of and Sedimentation from a Well Site."

(2) If the application for the proposed coal bed methane well is for a tract in which coal bed methane rights have been severed, the applicant shall conform to the requirements of KRS 353.593, 353.5901, and 805 KAR 1:170. If the coal bed methane rights have not been severed, the applicant shall conform to this administrative regulation.

(3) In addition to the requirements set out in KRS 349.130 and 353.5901, the following information shall be set out on Form CBM-11:

(a) The applicant's and surface owner's names, addresses and telephone numbers, the county in which the well is proposed to be drilled, and the well number;

(b) A listing or description of fertilizers and soil amendments and seed or trees to be planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed and trees to be planted; and

(c) A detailed drawing of the road, well location and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the following requirements:

1. The surface owner's tract shall be identified on the drawing, with the name of the surface owner if not listed on the legend, which drawing shall also indicate the acreage to be disturbed.

2. The drawing may be made over an enlarged section of a United States Geological Survey (USGS) 1:24000 topographic map and may be enlarged to approximately 1"=400' and be submitted on an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the sym-

bols set out on Form CBM-11.

3. The drawing shall have a legend with the applicant's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name.

Section 3. Construction and Maintenance. (1) The construction of the well site, including roads, pits, tanks, lines and other areas disturbed, shall be performed by the operator in accordance with the operations and reclamation proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved. The vertical grades shall be as low as reasonably practicable and compatible with topography.

(2) If the site is kept open for long-term use for well servicing and for coal bed methane production, the operator shall:

(a) Maintain access roads in a manner as to allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes, and provide that maintenance in accordance with the operations and reclamation proposal;

(b) Establish drainage to adequately accept runoff from access roads, the well site and other areas in a manner which prevents unreasonable interference with the surface owner's property, roads, farming operations, and buildings, and establish that drainage in accordance with the operations and reclamation proposal; and

(c) Repair access roads, the well site area, and pits damaged by events such as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred; however, the operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction or operation of the well by the operator.

Section 4. Final Reclamation and Release of Bond. (1) The operator shall provide written notice to the division when final reclamation and plugging have been completed.

(2) The bond required in KRS 349.120 shall not be released until a division inspector has made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging and has filed a report to the director documenting that the following have occurred:

(a) All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material;

(b) A diverse and effective permanent vegetative cover has been established; and

(c) Any matters relating to settlement, inadequate vegetative cover or erosion have been corrected.

Section 5. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a well located on a severed minerals tract and for which an approved operations and reclamation proposal is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before signing Form CBM-10, "Well Transfer," incorporated by reference in 805 KAR 9:060;

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;

(c) Secure from the successor operator a letter indicating he has received from the transferring operator a copy of Form CBM-11 and that he is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;

(d) Submit to the division the executed Form CBM-10, incorporated by reference in 805 KAR 9:060, the twenty-five (25) dollar per well transfer fee, and the letter of the successor op-

erator's agreement to accept responsibility for reclamation in the manner set forth on Form CBM-11; and

(e) Provide the surface owner of record with a copy of Form CBM-10 if he submits it to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied and shall advise the transferring and successor operators in writing when the well is transferred.

Section 6. Operator Noncompliance. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation proposal or the requirements of Section 5 of this administrative regulation, a written notice of violation describing the noncompliance shall be served upon the operator, by personal service or by certified mail, return receipt requested, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation shall allow the operator up to forty-five (45) days from the date of his receipt of the notice to correct the violation.

(3) An operator may file for an extension of time to correct a violation by submitting a letter to the director describing the need for that extension; if the director concludes that the request is reasonable and that an extension of time shall not violate the requirements of this administrative regulation or KRS Chapter 349, he may grant the request for extension of time.

(4) The operator's bond may be forfeited to the department's coal bed methane well plugging fund, pursuant to KRS 349.120, if he fails to make required corrections.

(5) An operator who, after hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, is subject to the penalties described in KRS 349.155.

Section 7. Waiver of Reclamation by Surface Owner. (1) The surface owner and operator may waive the reclamation requirements of KRS 349.105(4) if the surface owner demonstrates to the department that the coal bed methane well site shall be used as a building site, or for another purpose that would make reclamation of the site unnecessary.

(2) The waiver shall be in writing and signed by the surface owner and operator.

(3) The department may approve the waiver, and the decision to approve shall be based upon the information presented for the alternate use of the disturbed area, which ensures that the alternate use shall be of a nature that would make reclamation unnecessary.

(4) Any surface owner who waives the reclamation requirements of KRS 349.105(4) but fails to use the coal bed methane well site as a building site or for another purpose approved for making reclamation of the site unnecessary, shall assume responsibility for satisfying the reclamation requirements of KRS 349.105(4).

Section 8. Material Incorporated by Reference. (1) "Plan to Prevent Erosion of and Sedimentation from a Well Site, Form CBM-11, Jan. 2005," Division of Oil and Gas Conservation, is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (31 Ky.R. 1475; Am. 1968; eff. 6-8-2005; TAm eff. 7-6-2016.)